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Atty Docket No 100204110-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s):	Steven GOLD et al.	Confirmation No.:	9415
Serial No.:	10/723,950	Examiner:	Reba I. Elmore
Filed:	November 26, 2003	Group Art Unit:	2189
Title:	DATA MANAGEMENT SYSTEMS, ARTICLES OF MANUFACTURE, AND DATA STORAGE METHODS		

MAIL STOP ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

Sir:

The present comments on the Examiner's Statement of Reasons for Allowance are hereby submitted to clarify the scope of the claims.

MPEP 1302.14 states, in relevant part,

Where specific reasons are recorded by the examiner, care must be taken to ensure that statements of reasons for allowance (or indication of allowable subject matter) are accurate, precise, and do not place unwarranted interpretations, whether broad or narrow, upon the claims. The examiner should keep in mind the possible misinterpretations of his or her statement that may be made and its possible effects. Each statement should include at least (1) the major difference in the claims not found in the prior art of record, and (2) the reasons why that difference is considered to define patentably over the prior art if either of these reasons for allowance is not clear in the record.

It is respectfully submitted that the Examiner has failed to comply with the requirements set forth in MPEP 1302.14 because the Reasons for Allowance mailed on June 10, 2010 mischaracterize the language contained in the independent claims. More particularly, instead of discussing the language contained in the claims, the Examiner

discusses a number of elements that are not recited in the claims. For instance, the Reasons for Allowance states that the “respective capacity [is] both storage capacity and processing capacity.” As another example, the Reasons for Allowance states that,

If the capacity is storage capacity then the storage is increased to accommodate the increased amount of stored data or the data is rearranged to load balance the data in the protected storage system and the exceeded storage device is relieved of the data excess. If the capacity is processing capacity then the process input/output requests are managed, archive agents which are part of the storage devices control the processing capacity are invoked to control the processing capacity of the input/output requests. The archive agent monitor capacities of the individual storage devices for both storage ability and processing capability.

The assertions in the Reasons for Allowance are thus not tied to the language contained in the independent claims and the independent claims are allowable over the cited documents of record for reasons other than those presented in the Reasons for Allowance. More particularly, for instance, the independent claims are allowable over the cited documents of record based upon reasonable interpretations of the features recited therein. The claims that depend upon the independent claims are allowable over the cited documents of record at least by virtue of their dependencies upon the allowable independent claims.

Accordingly, the allowed claims should not be narrowly construed as suggested in the Examiner’s Statement of the Reasons for Allowance, but rather, should be construed based upon the features recited in the claims.

PATENT

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Please grant any required extensions of time and charge any fees due in connection with this submission to Deposit Account No. 08-2025.

Respectfully submitted,

Dated: September 9, 2010

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